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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

National institutions for the promotion and protection of human rights

Report of the Secretary-General submitted in accordance with Commission on Human Rights resolution 1996/50

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Introduction

1. This document has been prepared pursuant to Commission on Human Rights resolution 1996/50, in which the Commission reaffirmed the importance of the development of effective national institutions for the promotion and protection of human rights in keeping with the Principles relating to the status of national institutions annexed to General Assembly resolution 48/134.

2. In paragraph 7 of that resolution, entitled "National institutions for the promotion and protection of human rights", adopted at its fifty-second session, the Commission requested the Centre for Human Rights, with the assistance of national institutions and their Coordinating Committee, to continue to provide technical assistance for States wishing to establish or strengthen their national institutions and to organize training programmes for national institutions which requested them.

3. In paragraph 16, the Commission requested the Secretary-General again to invite Member States which had not yet done so to inform him of their views concerning possible forms of participation by national institutions in meetings of the Commission on Human Rights and its subsidiary bodies and, in particular, to address themselves to possible measures which could provide for such participation, and to include the information provided by Governments in his report to the Commission.

4. Pursuant to that resolution, on 2 October 1996, the Secretary-General sent a note verbale to Governments, national human rights institutions and intergovernmental organizations requesting them to transmit their comments and suggestions concerning possible forms of participation by national institutions.

5. As of 20 December 1996, replies had been received from the Governments of the following countries: Armenia, Germany, India, New Zealand, United Kingdom of Great Britain and Northern Ireland. Information was also submitted by a number of Governments and national institutions on the occasion of the fifty-second session of the Commission.

6. The Principles relating to the status of national institutions, for the promotion and protection of human rights serve as guidelines for the mandate and mode of operation of national institutions.

7. The present report is submitted to the Commission pursuant to paragraph 21 of resolution 1996/50.

I. PARTICIPATION BY NATIONAL INSTITUTIONS IN MEETINGS OF THE COMMISSION ON HUMAN RIGHTS AND ITS SUBSIDIARY BODIES

A. Views submitted by States

8. The Government of the Republic of Armenia emphasized that the independence of national institutions was of utmost importance, and suggested that national institutions should be granted special consultative status.

This would enable them to express their position at important meetings, such as the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, with greater independence.

9. The Government of Canada* stated that national institutions for human rights were the practical link between international standards and their concrete application, the bridge between the ideal and its implementation. National institutions must therefore be given a distinct status, independent of their State delegations, so that they could deal directly and in their own right with the Commission on Human Rights.

10. In the opinion of the Government of Germany, national institutions played an important role in the promotion and protection of human rights. In the interest of fruitful and efficient work undertaken by the Commission on Human Rights, however, no new category of participants should be introduced. The autonomous participation of national institutions in meetings of the Commission should therefore not be envisaged. A possible form of participation could be the integration of representatives of national institutions in governmental delegations. This would take account of the fact that national institutions in most cases were linked to, or are even part of either the executive or the legislature.

11. The Government of India referred to the Vienna Declaration and Programme of Action which reaffirmed the important role played by national institutions in the promotion and protection of human rights, in particular in their advisory capacity to competent authorities, their role in remedying human rights violations, in disseminating human rights information and providing human rights education. The Government of India recalled that national institutions were accorded a special and separate status at the World Conference on Human Rights which distinguished them from non-governmental organizations and official delegations. As such they were able to make an important contribution to those deliberations.

12. Since the World Conference, national institutions had participated as independent entities in several seminars and workshops organized by the United Nations human rights system. Some national institutions had also addressed the Commission on Human Rights as part of official delegations or from the seats of official delegations. At the fifty-second session of the Commission, the Chairman decided to allocate separate speaking time for national institutions during discussions on the agenda item relevant to them. The Government of India stressed that national institutions were independent from Governments and, in India's case, the National Human Rights Commission was set up by an act of Parliament. The existing situation of national

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* Information submitted at the fifty-second session of the Commission on Human Rights.

institutions having to address the Commission as part of official delegations, or from the seats of their respective official delegations, led to anomalous situations. On the one hand, the views of the national institutions might not, on a specific issue, coincide with the views or approaches of Governments. On the other hand, national institutions themselves had indicated that this practice denied recognition of their independent role and might affect their credibility at home.

13. The Government of India expressed the belief that the Commission on Human Rights should formalize the participation of national institutions during the discussion of the agenda sub-item. "National institutions for the promotion and protection of human rights". Since non-governmental organizations participated fully in these discussions, national institutions could not be denied the same right. During the debate on this item, separate seating arrangements should be made for national institutions and separate speaking time allocated to them. This would provide national institutions with an opportunity to inform the Commission about the activities which they had undertaken, the successes they had achieved and the challenges they faced in advancing the cause of human rights. Such participation by national institutions could encourage them in their work by giving them an appropriate international hearing, if not recognition. In addition, the information they provided on their national activities might encourage cooperation among national institutions, including through the setting up of such institutions in countries where they did not exist.

14. The Government of India expressed support for the search for an acceptable solution to enable national institutions to participate in an appropriate manner in their own right in meetings of the Commission on Human Rights, including at its fifty-third session. In addition, the Government was of the view that the Bureau of the fifty-third session of the Commission should give consideration to this matter and provide interested national institutions with independent seating space and separate speaking time during discussions on the relevant sub-item.

15. The Government of New Zealand welcomed the effort made by the United Nations over the past several years to provide technical assistance to States wishing to establish or strengthen national human rights institutions. The promotion of national institutions in meetings of the Commission on Human Rights and its subsidiary bodies was viewed as an important way of translating international human rights commitments into practical implementation at the domestic level. National institutions were also well placed to contribute to the consideration by States of the ratification of human rights instruments and to support the process of country reporting. The Government of New Zealand stated that it valued the independence of the New Zealand Human Rights Commission and acknowledged its role in monitoring domestic human rights issues, as well as in building cooperative links with counterpart national institutions in other countries, particularly in the Asian-Pacific region.

16. The Government of New Zealand was therefore of the view that the work of the Commission would be enhanced by the effective participation of national institutions and that consistent with the Vienna Declaration and Programme of Action, continuing efforts should be made to facilitate such participation.

The decision of the Chairman of the fifty-second session of the Commission to introduce an interim arrangement whereby national institutions could speak from country desks, both in their own right and at no cost to country time, was a positive and welcome development. The Government expressed the hope that this arrangement could be maintained and regularized at the fifty-third session of the Commission. Furthermore, given the potential contribution of national institutions, it was recommended that an incremental approach be taken to progressing the participation issue, with ongoing opportunity for discussion and the emergence of consensus on additional elements in due course. Finally, it was stressed that it would be important to ensure that participation by national institutions was achieved in a way that enhanced the overall effective functioning of these meetings. It was noted that the rules of procedure of the Economic and Social Council allowed non-governmental organizations to participate in meetings, but contained no similar provisions for quasi-governmental organizations such as national institutions.

17. The Government of the United Kingdom acknowledged the important and constructive role played by national institutions for the promotion and protection of human rights. It supported the work of the United Nations to define their functions, and underscored that national institutions could do particularly important work in developing and newly democratic countries which were on the path to greater respect for human rights.

B. Views submitted by national institutions

18. At its fifty-second session, the Commission on Human Rights heard statements from national institutions for the promotion and protection of human rights, which included statements concerning their forms of participation at meetings of United Nations bodies (National institutions were allowed in their own right to participate in the deliberations under the sub-item of the agenda on national institutions.

19. The representative of the National Consultative Commission on Human Rights of France said that the role and function of national institutions for the promotion and protection of human rights had been recognized by successive resolutions of the Commission and by the General Assembly. Moreover, the World Conference on Human Rights had accorded them a very special place. Thus, there was a case for permitting such bodies to participate in the work of the Commission and its subsidiary bodies with observer status.

20. The representative of the Human Rights and Equal Opportunity Commission of Australia reiterated that the fact that national institutions could now participate in their own right in the structures and workings of international human rights forums, gave meaning to the frequent expressions of support by the United Nations for the development of national institutions. The representative stressed that the Commission on Human Rights should confirm and continue arrangements for the participation of national institutions in the Commission and its subsidiary bodies. National institutions clearly were not Governments, as they were independent, and at the same time, they were different from non-governmental organizations. An appropriate status for national institutions was therefore needed.

II. EXCHANGE OF INFORMATION AND EXPERIENCE CONCERNING THE ESTABLISHMENT AND OPERATION OF NATIONAL INSTITUTIONS

A. Governments

21. The Government of Peru provided information on the organization and functions of the Office of the Ombudsman, established in September 1996. According to the relevant regulations, the Office shall be an autonomous constitutional body with legal capacity in public law and shall be responsible for protecting the constitutional and fundamental rights of individuals and the community and overseeing compliance by public authorities with their duties and the proper provision of public services to the citizenry. Information was provided on the structure and activities to be undertaken by the Office of the Ombudsman. In particular, the Promotion and Dissemination Office shall be responsible for proposing policies for, and implementing activities relating to promotion, dissemination and education in the Office's areas of competence, particularly those related to the fundamental rights of individuals and the community. The Office's special programmes and projects shall consist of specialized activities concerning, inter alia, displaced persons, the rights of women, the rights of children and adolescents, the penal and prison systems, indigenous communities, disabled persons and other sectors in need of special protection.

B. National institutions

22. The representative of the National Observatory for Human Rights of Algeria advised that the Observatory was based on the principle of institutional and cultural pluralism. It had been in operation since 1992 in a socio-political context of rising armed terrorist violence. The Observatory had to focus its efforts on the human rights implications of security measures and on the basic issues of the right to life, but none the less was trying also to pay attention to other human rights matters. Security forces were investigated by the Observatory whenever there were complaints of human rights violations attributed to them, including complaints of arbitrary detention.

23. The representative of the National Commission on Human Rights of Cameroon stated that at the regional level, other African national human rights institutions had entrusted Cameroon's National Commission with the task of planning, preparing and hosting the first African Regional Conference of National Institutions for the Promotion and Protection of Human Rights with the objective, among others, of encouraging States in the region to create their own national institutions (see also paras. 25-27). During the past year, a number of human rights training seminars had been targeted at administrative personnel, law enforcement officers and jurists. In its continuous search for new channels for promoting and protecting human rights, the National Commission had initiated contacts with religious bodies, and had become deeply involved in investigating inter-ethnic land conflicts which had assumed alarming dimensions. A Coordinating Committee of African Human Rights Institutions had now been created, but it lacked resources.

24. The representative of the National Commission for Human Rights of Togo stated that the Commission was entrusted with protecting citizens from abuse by government agencies and bodies of the State. The National Commission had

carried out regular but unannounced visits to police stations and places of detention; in some cases persons detained arbitrarily had been freed and improvements in prison conditions had been made. Discussions had also been held with officials of Benin to consider conditions of Togolese citizens in exile in that country, and the National Commission had participated in and encouraged regional meetings of national human rights bodies.

III. ASSISTANCE IN THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. Regional and interregional meetings of national institutions

Africa

25. The First Conference of African Human Rights National Institutions was held in Yaoundé, Cameroon, from 5 to 7 February 1996, at the invitation of the National Committee for Human Rights and Freedoms of Cameroon and under the auspices of the High Commissioner/Centre for Human Rights. It was co-sponsored by the Canadian Human Rights Commission, the French National Consultative Commission on Human Rights and the Government of Cameroon. The Conference sowed the seeds of a new form of cooperation between national institutions in Africa; it met in the context of the tenth anniversary of the African Charter of Human and Peoples' Rights and addressed a subject of vital importance for Africa, that of strengthening human rights mechanisms which can act as a buffer between the public authorities and civil society, which promote the process of democratization and guarantee the rule of law.

26. The debates focused on the status, competence and activities of such institutions, the availability of material and human resources, and the political, social and economic environment in which national institutions for the promotion and protection of human rights in African countries develop and function. The participants were of the view that national institutions act as the cornerstone of the rule of law and enable the translation of human rights standards into practice.

27. Participants at the Conference adopted the 18-point Yaoundé Declaration which, inter alia, emphasized the importance of the creation and development of national institutions in African countries, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights; highlighted the need to strengthen existing national institutions through concrete activities and the exchange of information; encouraged African States which have not yet done so to establish effective, independent and pluralistic national institutions; recommended that African States ratify international human rights instruments; requested the High Commissioner/Centre for Human Rights to provide the necessary advisory services for the elaboration of a programme of technical cooperation; and decided to create a Coordinating Committee of African Human Rights National Institutions to liaise closely with the international Coordinating Committee of National Institutions and High Commissioner/Centre for Human Rights.

Asia-Pacific

28. The First Asia-Pacific Regional Workshop of National Human Rights Institutions was held in Darwin, Australia, from 8 to 10 July 1996. The Workshop, organized jointly by the Australian Human Rights and Equal Opportunity Commission and the New Zealand Human Rights Commission, was sponsored by the United Nations High Commissioner/Centre for Human Rights and the Australian Government. The Workshop brought together, as participants, senior representatives from four of the five national human rights commissions which now exist in the region (Australia, India, Indonesia and New Zealand). Senior government officials from eight countries of the region which are currently contemplating or in the process of establishing national human rights institutions (Fiji, Mongolia, Nepal, Pakistan, Papua New Guinea, the Solomon Islands, Sri Lanka and Thailand) were also in attendance.

29. The objectives of the Workshop were twofold: (a) to promote cooperation among, and the strengthening of national human rights institutions in the Asian-Pacific region by facilitating discussion and the development of joint activities; and (b) to encourage and assist those States that are in the process of establishing national human rights institutions through, inter alia, the provision of practical assistance and support. To achieve these objectives, the programme of the Workshop was practical in orientation. Sessions were devoted to a range of topics of direct relevance to the creation and functioning of an effective institution including complaint investigation, mediation and conciliation; combating systemic discrimination; ensuring independence of action; working with the media and through human rights education.

30. At its final session, the Workshop adopted the Larrakia Declaration consisting of conclusions, recommendations and decisions. The Declaration (named after the traditional indigenous landowners of the Darwin region) emphasized the need for cooperation among all actors involved in the defence of human rights. It underlined the fundamental importance of ensuring that all national institutions are created and operate in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights and that appropriate assistance and support is given to Governments and institutions to this end.

31. The Declaration also reflected the decision taken by the participants to establish an Asia-Pacific Regional Forum of National Human Rights Institutions. The Forum will be open to all national institutions of the region established in conformity with the Principles. It will also welcome, as observers, interested Governments and non-governmental organizations. The operational expenses of the Forum will initially be funded by the Australian Government and the secretariat will be based within the Australian Human Rights and Equal Opportunity Commission for its first three years of operation.

32. The Second International Workshop on Ombudsman Institutions and Human Rights, organized by the United Nations Development Programme in cooperation with the Government of the Republic of Moldova and with the assistance and participation of the United Nations High Commissioner/Centre for Human Rights, was held in Chisinau, Moldova, from 21 to 23 May 1996. The Workshop aimed to

(a) initiate regional and international cooperation among national human rights institutions (ombudsmen offices and human rights commissions); (b) devise strategies to promote the establishment of national institutions in the Commonwealth of Independent States and in countries of Eastern and Central Europe; (c) encourage States in the region to establish such institutions or to strengthen existing ones; and (d) facilitate an exchange of information and experiences between leaders of existing national institutions as well as between these persons and representatives of countries which are considering the establishment of such institutions. Assistance provided by the High Commissioner/Centre for Human Rights enabled the expert participation of representatives of the Australian and Indian human rights commissions.

B. Advisory services and technical cooperation

33. The World Conference on Human Rights, the General Assembly and the Commission on Human Rights (most recently in its resolution 1996/50) have all called upon the High Commissioner/Centre for Human Rights to provide assistance for the establishment and/or strengthening of national human rights institutions. Assistance to national institutions is now a core component of the technical cooperation programme of the High Commissioner/Centre for Human Rights and is generally funded by contributions to the Voluntary Fund for Technical Cooperation in the Field of Human Rights. During 1996, a large number of countries and institutions, particularly in Africa, Asia and Eastern Europe, were the focus of technical cooperation activities. The following paragraphs do not provide an exhaustive list of all relevant activities undertaken during the reporting period. Additional information may be found in the report of the Secretary-General to the Commission on the advisory services and technical cooperation programme (E/CN.4/1997/86) and in the report of the High Commissioner for Human Rights to the Commission (E/CN.4/1997/98).

34. Several significant developments in the area of national institutions took place on the African continent during 1996. A needs assessment mission to South Africa recommended that the newly established Human Rights Commission should be a central focus of the proposed technical cooperation project with that country. That project has now been elaborated and is expected to be implemented shortly. The High Commissioner/Centre for Human Rights provided advice to the Government of Burundi on a draft presidential decree to establish a human rights commission. In Malawi, an ongoing project of technical assistance includes resources to facilitate the establishment and effective operation of the human rights commission prescribed in the new Constitution. A request for assistance has also been received from the Government of Uganda which is in the process of establishing a human rights commission in accordance with the new Constitution. A mission to assess the needs of this institution is expected to take place in the first quarter of 1997.

35. A great deal of technical cooperation activity for national institutions took place in the Asian-Pacific region during 1996. In the Commission on Human Rights as well as other United Nations forums, the Government of Papua New Guinea has affirmed its commitment to establishing an independent, effective human rights commission without delay. A project to facilitate the establishment of such an institution commenced implementation in August 1996.

Under this project a senior consultant has been recruited to work with the Government in finalizing the necessary legislation and constitutional amendments. In Mongolia, the High Commissioner/Centre for Human Rights sponsored a workshop for parliamentarians on establishing an independent human rights commission in that country. In addition to the activities in relation to the above-mentioned projects, the Special Adivser to the High Commissioner visited the Indonesian Human Rights Commission and held talks with senior officials in both Bangladesh and Thailand.

36. Interest in technical assistance for national institutions has also been very high amongst countries of Central and Eastern Europe. During 1996 the High Commissioner/Centre for Human Rights continued implementation of its comprehensive project with the Latvian Human Rights Office. The High Commissioner/Centre for Human Rights provided advice and assistance throughout the year both to the Government, and the Human Rights Office as the necessary legislation was finalized. The Government of the Republic of Moldova, in addition to hosting a regional meeting of national human rights institutions (see para. 32 above), also indicated in 1996 its intention to establish an independent human rights institution. A similar intention was expressed by the Government of Belarus. In both these countries, small projects of technical assistance aimed at facilitating the establishment of independent effective institutions have been developed and are expected to be implemented during 1997.

37. It is important that much of this activity has been realized in close collaboration with UNDP. In Papua New Guinea, UNDP is playing an active role in administering the relevant project. In relation to Bangladesh, a mission was undertaken by the High Commissioner/Centre for Human Rights in direct response to a request from UNDP which is currently in the process of developing a comprehensive country project. The technical cooperation project in Latvia is, in fact, a joint project which enjoys financial and administrative input from both the High Commissioner/Centre for Human Rights and UNDP Latvia. This arrangement has provided a model for similar cooperative endeavours with UNDP with respect to both Belarus and the Republic of Moldova. Cooperative relationships in the area of national institutions were also established and consolidated with other multilateral organizations, including the Organization for Security and Cooperation in Europe (OSCE), and several leading academic institutions.

C. Coordinating Committee of National Institutions

38. In its resolution 1994/54, the Commission on Human Rights welcomed the decision taken by national institutions to set up a Coordinating Committee to meet under the auspices of the Centre for Human Rights. The Committee, which consists of representatives of the national institutions of Australia, Cameroon, Canada, France, India, Mexico, New Zealand, the Philippines, Sweden and Tunisia, encourages the establishment and strengthening of national human rights mechanisms. (The first and second meetings of the Committee were held in February 1994 and 1995 respectively.)

39. The third meeting of the Coordinating Committee was held on 2 and 3 April 1996. Participants discussed activities undertaken by the various national institutions over the previous year, especially with reference to a

questionnaire sent to national institutions on the application of the Principles relating to the status of national institutions for the promotion and protection of human rights and the position and status of women and disabled persons; the relationship with the Office of the United Nations High Commissioner for Human Rights; the relationship with the International Ombudsman Institute and with regional bodies; the holding of a fourth international workshop on national institutions; and additional matters including the two draft optional protocols to the Convention on the Rights of the Child.

IV. CONCLUSIONS AND RECOMMENDATIONS

40. The important role of national institutions for the promotion and protection of human rights has now been widely recognized. They act as a source of human rights information for the Government and the people of the country, assist in educating the public about respect for human rights, advise on issues regarding human rights (including those referred to them by the Government), act as a mediator between the Government and civil society, and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights. In some countries, they also handle individual complaints concerning human rights abuses.

41. In view of their past and potential contribution, it would be appropriate for the Commission on Human Rights to make a determination concerning the participation of national institutions in its meetings and in those of its subsidiary bodies. A number of different forms of participation are possible. National institutions could, for example, be granted the right to participate as a separate category of participant or even as a separate entity within official delegations. The latter option is, however, somewhat anomalous in view of the fact that national institutions should, according to the Principles endorsed by the Commission and the General Assembly, operate independently from Government. Irrespective of the precise status granted to national institutions, it is strongly recommended that the Commission on Human Rights continue its practice of allocating speaking time to these bodies which is independent of the time allocated to their respective Governments.

42. Should national institutions be granted a certain status or certain rights within the Commission on Human Rights, it will be necessary to address the question as to which institutions are, in fact, entitled to this status or to enjoyment of these rights. In this connection, reference is once again made to the Principles relating to the status of national institutions for the promotion and protection of human rights. The Principles set out the essential characteristics of national institutions which can be used to determine which institutions may be considered as such.

43. A great deal of activity in the area of national institutions is now taking place at the regional and subregional levels. Of particular note are the various initiatives which have taken place during 1996 in the Asian-Pacific region, in Africa and in Central and Eastern Europe. Clearly, such cooperative endeavours have great potential to encourage the establishment of effective, independent institutions and the strengthening of existing ones, particularly through the exchange of information and

experiences. Informal regional arrangements of national institutions, such as those which have been set up in the African and Asian-Pacific regions, are also valuable and should be supported by Member States and the United Nations.

44. The High Commissioner/Centre for Human Rights has, throughout 1996, been able to provide expert advice and assistance to a large number of national institutions as well as to Governments in the process of establishing such institutions. This work has been practical in orientation and has resulted in tangible achievements in respect of both existing and planned national institutions. It has been achieved despite severe limitations on human and financial resources. The significant increase in the number of requests for such assistance demonstrates the value of this area of work. At the same time, however, it is necessary for Member States to be aware of the fact that a continuation of high-quality assistance is heavily dependent upon the necessary resources being made available.